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November 6, 2020

Hon. Loretta A. Preska
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York

Re: United States v. Donziger, 19-CR-561 (LAP)11-CV-691 (LAK)

Dear Judge Preska:

I will be accompanying Mr. Donziger to court on Monday if for no other reason than to stand in solidarity with a friend and human rights lawyer whom I deeply respect for his courage and whose right to counsel and a fair trial is being violated.

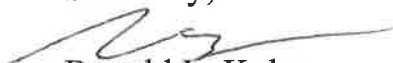
As you know, when this Court took the extraordinary and needless step last August of disqualifying Mr. Donziger's lead counsel over a potential conflict that could manifest itself (if at all) only at the sentencing stage of the proceedings, I offered at that time (now nine weeks ago) to appear and assume lead counsel role, provided the case could be adjourned until December 7, 2020 due my prior commitments. This was an obviously reasonable request. This Court ignored my offer and then over the ensuing months adjourned trial three times, *sua sponte*—not to accommodate Mr. Donziger's reasonable request, but apparently to spite it. I have been practicing law in the Southern District for close to four decades and have never seen such a reasonable request, based on Constitutionally-compelling need, denied on no basis than judicial *ipse dixit*.

Due to the private prosecution's insistence on going to trial on all six counts, as opposed to paring its case down to what it sees as the two strongest, easiest to

prove allegations,¹ preparing to defend this case is a task that requires a substantial period of time—far in excess of any misdemeanor (and many felonies) that I have tried. To illustrate, one of the prosecution’s witnesses, William Thomson, an attorney at Gibson Dunn & Crutcher (GDC), was interviewed by the FBI at the direction of the private prosecutor. In the course of that interview, he was directed to review nineteen separate documents from the underlying Chevron litigation. These documents reference dozens of other documents from the underlying litigation which in turn, reference many others. Mr. Thomson has been working on this litigation since at some point prior to 2011. Similarly, Anne Champion, another GDC lawyer who will be testifying for the prosecution, informed the FBI that she had spent her entire legal career (after her clerkship) working exclusively on the Chevron litigation against Mr. Donziger—some eleven years. In short, the prosecution, which has had at least three lawyers working on this case for some eighteen months, have been buttressed by a highly-compensated legal team of witnesses from a Chevron law firm who have accumulated many decades of collective institutional experience with this case. To expect any lawyer to master this record in the seventy days this Court allotted is risible. It simply cannot be done.

If this Court still elects to go forward on Monday with no lawyer adequately prepared to represent Mr. Donziger on this inordinately complex case, and no lawyer physically in court with him, I request the courtesy of addressing the Court, from the well, to discuss scheduling an adjourn date. I implore this Court, even at this late date, to put aside the sense of grievance against Mr. Donziger that I have gleaned from this Court’s orders, and adjourn the trial.

Sincerely,



Ronald L. Kuby

¹ It is again worth noting that the United States Attorney for the Southern District of New York refused to prosecute any count in this case due to lack of resources. Judge Kaplan resolved that problem by providing a bottomless well of public funding to private, for-profit prosecutors at the Seward & Kissel firm which represented Chevron as recently as 2018. Among other odious effects, this inducement creates a financial incentive for the prosecution to make this case as long and labor-intensive as possible.